IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,	)	
Plaintiff,	)	
	)	Civil Action No. 13-0006644
	)	Judge Craig Iscoe
v.	)	
OPTIONS PUBLIC CHARTER SCHOOL, et al.,	)	
Defendants.	)	

DEFENDANTS EEMC AND EES'S OPPOSITION
TO THE PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

I. PRELIMINARY STATEMENT

The Options Public Charter School ("Options") is a financially sound, well-run school that provides state of the art special education services to at-risk D.C. students. As detailed below, the allegations in the complaint regarding the management of Options are directly contradicted by the District of Columbia's ("District's") own exhibits, and by other accounting and financial documents disclosed and vetted over the years by numerous parties.[1]

In contrast, the District's hastily compiled and heated allegations are based on less than one month of review by a Tyson's Corner Global Foreign Corrupt Practices Act ("FCPA") accountant who did not even wait to receive documents he requested from accountants and auditors before filing his affidavit.[2] Unfortunately, the District's action is just the latest salvo in the long-running battle over special education in the charter school system. The struggle is well-

[1] See Def. Ex. 1, Affidavit of A. Shorter, paras. 3, 4, 5, 6.
[2] See Def. Ex. 1, Affidavit of A. Shorter, para. 7.

known. The problem with Options School is not improper management. The problem is not financial improprieties. The financials of Options have been audited in detail every year.[3] No questions have been raised by any of the outside auditors, and all of the supposed "improper" transactions were disclosed, supported, and approved. Further, the financial documents are clear that it was Options School, not any individual, that profited from each and every transaction mentioned in the complaint.

But from the D.C. Public Charter School Board's ("Charter Board's") perspective, the problem with Options is that it has successfully drawn a large pool of special education students into the charter school system. Another problem with Options School is that it is profitable and asset-rich, but run by local educators. The Charter Board, on the other hand, would like to, and has gone out of its way to give charters and contracts to national corporations and investors outside of the District of Columbia.[4]

The Charter Board's long-running objective has been to de-charter the school, reduce its special-education focus, and obtain the hundreds of million dollars of real estate owned by the school to entice national business investors into the D.C. Charter education "market."[5]

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[3] See Def. Ex. 1, Affidavit of A. Shorter, paras 3-4; see, e.g., Plaintiff's Ex. 3.

[4] See, e.g., Def. Ex. 2, Charter Board Procedures enacted for certain management applicants, http://www.dcpcsb.org/agenda/?id=120; see also Def. Ex. 3, Emma Brown, "D.C. Clamps Down on Low-Performing Charter Schools, Approves Rocketship" Washington Post (February 26, 2013), http://articles.washingtonpost.com/2013-02-26/local/37303400_1_charter-schools-open-two-schools-high-performing-school (recent large charter involving RocketShip, a national educational management company lead by a close business colleague of the Executive Director of the D.C. Charter School Board).

[5] See Def., Ex. 4, PowerPoint presentation on D.C. School Closures; see also Plaintiffs' Exhibit E, Resume of Joshua M. Kern, the individual who the Charter Board is proposing replace EEMC and EES. Mr. Kern has acted simultaneously as a Member of the D.C. Public Charter School Board, as an owner of a Public Charter School and as a Managing Member of a for-profit national education company called TenSquare, LLC.

This time, the Charter Board decided to pursue an aggressive tactic, and "investigate" the Options management transition. On August 28, 2013, the Charter Board hired an accountant (also a friend of a Charter Board staff member who works for a vendor located outside of D.C.) to conduct a three-week investigation of the Options School. This accountant did not wait to complete the investigation. The accountant did not even wait to receive basic accounting documents. Instead, in less than one month, he filed an affidavit that lists questions or "concerns" that he feels should be addressed.[6]

The Charter Board did not want to wait for the answers. It even refused to communicate with Options Management, even though Management pressed to be heard on any topics of concern.[7] The Charter Board did not want to wait because it wants to use this action to install its own former member at Options, who is also a manager of a for-profit national company. See Plaintiff's Exhibit E.

And the Charter Board has succeeded so far this week. It has generated career-crushing headline allegations and also gained support for its move to take over Options School – all by setting forth allegations that are not supported. The Charter Board was willing to make such allegations and convince others that the allegations should be believed, despite the fact that they are lodged after a cursory investigation and against individuals who have decades of dedication to the DC community and the education of D.C. special education students.

The Charter Board should not be permitted to use this court to circumvent its own process and obtain authority over Options School based on unsupported allegations and media

[6] See Plaintiff's Exhibit A, para. 12.
[7] See Def. Ex. 5, September 20, 2013 Letter from P. Marple to the D.C. Public Charter School Board.

headlines. The District's motion for a Temporary Restraining Order ("TRO") is equally without merit or legal authority, and should be denied.

II. FACTUAL BACKGROUND

A. Options School

Options is the oldest public charter school in the District of Columbia, serving children in grades 6 through 12 since 1996. Options is an award-winning institution whose mission is to provide a unique, high-quality educational experience to students at risk of dropping out of school due to their behavioral issues, underachieving record, and developmental disabilities. Many of these students also require therapeutic special education services. Options offers tailored services to its students by focusing on self-esteem, self-control over anger and frustration, desire to learn, and high academic competence. All of Options' students benefit from small class sizes with frequent access to state-of-the-art technology, counseling services and assessments, and intensive mediation. Over the years, Options has won numerous system and community awards, including Mayor Anthony Williams's High Performing School Incentive Award, which was granted during his tenure.

In 2003, Dr. Donna Montgomery began management of the school, and the result has been the successful growth and financial prosperity of Options School. The programs have a proven track record of student attendance, innovative instruction, and high levels of student retention. In 2005, the State Education Agency of the District of Columbia commended Options' performance, recognizing that Options' "program has been successful over the 2004-2005 school year" because it "met the qualitative expectations."[8]

[8] Def. Ex.6, June 21, 2005 Letter from D.C. State Ed. Agency at 1. Indeed, the same commendation noted that if "these children were not educated in the District of Columbia we would experience additional costs and budgetary implications."

Student performance scores for the population served improved significantly during Dr. Montgomery's tenure at Options. The school's D.C. Comprehensive Assessment System ("CAS") score for mathematics improved four points from 2009 to 2011, and for reading improved six points from 2009 to 2011.[9] In addition, as of 2012, 94% of students attending Options continuously from 9th grade graduated from high school. Additionally, Options middle and high school students currently maintain a remarkable attendance rate of 95% and 90%, respectively. These impressive achievements were obtained despite the fact that a high percentage of Options' student body has developmental, behavioral and emotional disabilities.[10]

In fact, most of the students at Options are transferees from other public schools. They are often "pushed out" by those schools because they are considered to cause problems or simply could not learn.[11] Nearly half of the students enrolled at Options have repeated a grade at least once, and some enroll on the recommendation of a juvenile judge. Seven out of ten students receive an Individualized Education Plan ("IEP"), which means that they require special education to address learning disabilities or behavioral problems.[12]

Despite the challenges and costs related to the special education services that it provides, Options currently enjoys a budgetary surplus of $4 million.[13] By all accounts, the existence of such a surplus is an extraordinary feat (and surely at odds with any notion that the school is being looted).

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[9] The D.C. Comprehensive Assessment System ("CAS") has been designed to measure the academic proficiency of students in the District of Columbia.

[10] See Def. Ex. 7, Options Public Charter School, Performance Management Framework, School Year 2011-2012, at 2, 4.

[11] See Def. Ex.8, Rick Maese, "At Options Charter, Football Offers Alternative to Troubled Youth," Washington Post (Sept. 5, 2012).

[12] See id.; Def. Ex. 9, Options Public Charter School, Annual Report, 2011-2012, at14.

[13] See Plaintiff's Ex. A-4, at 1.

B. Options Top Management

Dr. Montgomery has over 20 years of experience in special education, including as Director of Special Education at Forestville High School of Prince George's County. From 2003 to 2013, Dr. Montgomery worked for Options in the roles of Director of Special Education, Principal, and Executive Director.

Dr. David Cranford has worked in the mental health and school settings for 20 years. He has performed multiple roles in his career, including researcher, instructor, licensed clinical psychologist, expert witness, school board member, and director of mental health programs. Dr. Cranford served as an Assistant and Deputy Director for the D.C. Public Schools' Therapeutic Programs. While in school administration, he performs evaluations and supervises related service staff, and assists with the development of full time therapeutic programs. Dr. Cranford is an active member of the American Psychological Association and the D.C. Psychological Association.

Mr. Paul Dalton is the General Counsel of EEMC and the Director of EES. Mr. Dalton has over 33 years of legal experience, and heads a team of lawyers dedicated to serving children with special education needs.

C. EES and EEMC

EES is a private company incorporated by Options School in 2009. Since 2009, EES has provided Medicaid billing, transportation, and special education services to D.C. public charter schools. The profits generated from EES services go to Options School pursuant to the terms of contracts that have been disclosed since its inception in 2009.

EEMC is a new private company, incorporated by Dr. Montgomery and operational as of July 1, 2013. The mission of EEMC is to develop, manage, and monitor educational programs

for schools, with a focus on students at risk of underachieving. EEMC is more than a management company. EEMC currently provides services, pursuant to contracts, to 21 D.C. public charter schools, including:

- curriculum and instruction
- assessments and evaluations
- academic program development and professional development
- research on best practices and data analysis
- special education and full-time therapeutic teaching programs
- compliance services behavior intervention and modification programs
- student enrollment, facilities management and procurement/contracts
- fiscal management, human resources and administrative services
- Medicaid billing and transportation

III. PUBLIC CHARTER SCHOOLS IN THE DISTRICT

Public Charter schools are governed by the D.C. School Reform Act of 1995 ("Reform Act"). Under that Act, the public charter school system is completely separate from the D.C. Department of Public Schools. See D.C. Code §§ 38-1800.01-1837.02 (2013). The separation was intentional, with the purpose being to allow public charter schools to be managed by entities separate from the Department and its regulations. As a result, Public Charter schools are typically non-profit organizations that are often run by for-profit education service providers. On the other hand, the D.C. Public Charter School Board was created, and granted certain authority over charter schools, including the authority to charter and de-charter schools based on certain criteria. See §§ 38-1802.03, 1802.13.

There are more than 60 charter schools in D.C. that serve approximately 43% of D.C. public school students. See http://www.dcpcsb.org/Parents/DC-Charter-School-factsheet.aspx.

IV. ALLEGATIONS OF THE CHARTER BOARD

In support of the District's motion, the Charter Board alleges EES, EEMC and the other named defendants improperly gained $3 million dollars at the expense of D.C. taxpayers. The allegations include:

- **Improper Payments**

  These allegations concern payments made by Options School between 2012 and June 2013 that are alleged to have been excessive, illegal or otherwise done to benefit individual defendants.

- **"The $2.8 Million Contract"**

  These allegations concern a Management Services Agreement between Options School and EEMC (the new company headed by Dr. Montgomery) for the current school year, again with the allegations focused on the amount of the payments from Options School to EEMC under that contract.[14]

But the allegations of financial improprieties are just plain wrong. They are contradicted by the exhibits submitted by the District itself, and by the accounting and public records. Here are just a few examples:

Transportation Contracts. The District's motion for Temporary Relief asserts that EES was "self-dealing" its transportation contracts, alleging that from 2012-2013 Options School paid

[14] All of the Charter Board allegations address payments and the alleged reasons payments were made. None of the allegations concern the actual quality of services that EES or EEMC has provided and is providing to Options School. As noted, Options School is and has been managed by defendants for over ten years and, as a result, is financially sound, well-managed, and providing model special education services to over 400 D.C. students. EEMC has been afforded two days to respond to these allegations, so will not here list or respond to them all.

EES ten times more than a previous vendor for the same services. This is completely wrong. First, the allegation is based on the Charter Board's accountant's "finding" that the previous vendor was paid $70,000, when its own exhibits clearly show that the previous vendor was paid more than $300,000. Plaintiff's Motion for Temporary Relief at 4-5; Plaintiff's Ex. A-10, A-11, A-12. Second, the complaint states that the previous vendor and EES provided the very same transportation services. Plaintiff's Motion for Temporary Relief at 5. This is wrong. The District's own documents show that the previous vendor transported 70 students, whereas EES transported 225 students as well as provided Medicaid billing, which reduced Options cost to a net of $240,000.[15] In sum, the documents available to the Charter Board and its accountant show that the previous vendor cost Options $330,000 to transport 70 students while EES cost Options $240,000 to transport 225 students. So the District's "Transportation self dealing" allegation is just plain wrong, despite the fact that all the information has been available to the Charter Board and its accountant.

The Loan. Another example of the Charter Board and its accountant ignoring the facts is the loan allegation. The complaint alleges that there was an improper and "hidden" loan between Options School and EES. This, too, is not the case. As the accountant was informed and as the documents make more than evident: (1) the loan has always been available to the Charter Board and by the fact that the accountant affiant was told this last month;[16] (2) the accountant fails to mention that the loan was fully repaid in June 2013, lasting only a few months;[17] and (3) finally, the accountant fails to mention that the loan was created immediately when an accounting error was discovered and funds were owed to Options School.

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[15] Id.
[16] Def. Ex. 1, Affidavit of A. Shorter, para. 3-4.
[17] Id. at para. 4.

Bonus Payments. Another allegation by the Charter Board is that the top three Options executives received excessive bonuses of $180,000, $133,000 and $50,000 in 2012 and 2013, the year before they departed and formed EEMC.

The Charter Board obviously disapproves of these bonus amounts. But the Charter Board does not provide any norms for salaries and bonuses at other charter schools. The Charter Board does not address the length of service and the financial and programmatic health of the Options School under the management team. Finally, and once again, the Charter Board and its accountant again ignore the fact that these payments have long ago been disclosed. The District's own exhibits and the attached documents show that (1) an outside attorney reviewed the payments; (2) the payments were approved and disclosed; and (3) the amount of the payments represented compensation for the fact that despite serving for such a long time at Options, Options provided these executives with no retirement savings options.[18]

Once again, the Charter Board and its accountant have ignored facts and documents in order to make erroneous and emotionally-charged allegations.

Current Management Contract. Finally, the Charter Board asserts the current management contract between Options School and EEMC was propped up to ensure that EEMC received an unjustified payment of "$2.8 million." The Charter Board asserts the EEMC executives propped up the numbers by using false projections.

Unfortunately, it is not possible in less than 48 hours to address all of the erroneous allegations here.[19] But because the District is attempting to rely on its unsupported allegations to

[18] See Def. Ex. 10, correspondence and charts regarding retirement payment; see also Plaintiff's Exs. A-39, 40.

[19] In clear violation of D.C. Civ. P. R. 12-I, the District provided no notice to EEMC or EES before filing its Motion. The District served the unannounced Complaint, motion and exhibits on

seize a school, interfere with contractual relations, and freeze private company assets, it is worth noting:

- Options School is paying less under the current contract with EEMC than it did for last year's management;[20]
- Options School is paying less in salary to the EEMC individuals under the current contract than it did when they were executives last year;[21]
- Options School has already received substantial services from EEMC under the contract – far beyond "oversight and management" – including transportation, establishment of a separate Academy, obtaining a federal grant, additional behavioral and learning programming, Medicaid billing, accounting, investment, testing and student assessment;[22]
- The current contract was not a "sole source contract" as the Charter Board alleges. The current contract underwent a public Request for Proposal ("RFP") and was approved by the Charter Board.[23] By the Charter Board's own documents, the contract cannot be deemed a "sole source" contract;
- The Charter Board's allegation about an improper "42% increase" projections done to generate a $2.8 million dollar fee is nonsensical. Charter schools do not pay management companies based on projections and Options School will not pay EEMC based on projections;

Tuesday, October 1, 2013, mid-day. A hearing was set for Thursday, October 3, 2013 at 10:30 am.

[20] See Def. Ex. 11, Options PCS Payment Comparison for EEMC Services 2012-2013/2013-2014.

[21] See id.

[22] See id.

[23] See Plaintiff's Ex. A-16.

- If an accountant who was familiar with charter school financing had been hired, that accountant would have known that under charter contracts, up front deposits and first Quarter payments (like the two payments complained about by the Charter Board) are allowed for start up costs prior to schools opening in August.[24] But, that accountant would also have known that once the final number of students enrolled and the budget projections become actual numbers, the second and third Quarter payments are adjusted;
- As the attached documents show (and all of which were available to the Charter Board's accountant), the projections for Options School were adjusted after enrollment and were lowered for a number of reasons. The reasons for the adjustments include that EEMC obtained a federal grant for a separate facility, less students were enrolled, and there were initial expulsions;
- So, the alleged "$2.8 million dollar contract" is not that. Based on enrollment and other factors, it will be a $1.9 million dollar contract. This contract for all of EEMC service is more than reasonable and is for less than the previous year.

V. ARGUMENT

A. Appointment of a Biased Receiver

The District moves for the appointment of a specific receiver who would take over the management of Options School, breaking the contract with EEMC. There are three fundamental issues with the request the District is making to the Court here. One is that the individual suggested as a Receiver is a recent Charter Board member who will not be independent and therefore is an inappropriate choice. The proposed Receiver will follow the marching orders of the Charter Board. The Charter Board, however, is not a governing body that dictates to charter

[24] See the accountant's errors noted in Def. Ex. 1, Affidavit of A. para. 6.

schools. The purpose of the separation of the charter school system was to create independent schools that are not hampered by the rules, ideology and interests of a managing bureaucracy.

The second fundamental problem is that the proposed Receiver's background includes the very same "conflicts of interests" so loudly announced as inappropriate in the District's complaint. According to the Receiver's own resume, he served on the Charter Board at the very same time he owned and managed a D.C. Charter School and at the very same time he drew income from a for-profit education company. How can the District now propose that such arrangements are suitable for its Receiver, but assumed impropriety for D.C. management executives?

The third problem with the District proposal is that the process for taking over or de-chartering a school should not be done through a court proceeding occurring on two days notice. There are a variety of conflicts and process issues that exist but cannot be remedied once this relief is granted.

Finally, these issues lead to the students losing the services provided by EEMC. There are no allegations in the Complaint and motion that call into question EEMC and EES's stellar services to a population that is often neglected. Despite of this the District, based on the Charter Board's one- month investigation that got the facts wrong about old payments, is asking the Court to change everything.

B. The Attorney General has no authority under the D.C. Nonprofit Corporation Act to seek injunctive relief against EEMC or EES.

The Attorney General may seek an injunction against a nonprofit corporation from the D.C. Superior Court pursuant to his or her statutory authority vested by the D.C. Nonprofit Corporation Act, D.C. Code § 29-412.20 (a)(1) (the "Act"). To obtain relief, the Attorney General must demonstrate that a nonprofit corporation has exceeded or abused, and is continuing

to exceed or abuse, the authority conferred upon it by law or continued to act contrary to its nonprofit purposes (the relevant considerations here). Id. Among the equitable remedies the Attorney General may request are dissolution of a nonprofit corporation, placement of a corporation in receivership, imposition of a constructive trust on compensation paid to a corporation's director, officer, or manager, or grant other injunctive or equitable relief with respect to a corporation. Id. The Act authorizes the Attorney General to seek injunctive relief only with respect to a nonprofit corporation (defined by the Act as a corporation incorporated under or subject to the Act that is not a foreign corporation), but not with respect to a for-profit corporation like EEMS or EES. Id. § 29-401.02(6).

This jurisdiction has already decided one case where, like here, the plaintiff attempted to use the Act against a party that specifically was not covered by it. In Kelsey v. Ray, the plaintiff sued a church's pastor and other members under the Act, although the church was not incorporated pursuant to the Act. 723 A.2d 1215, 1216-17 (D.C. 1999). In fact, the church had been incorporated five years before the Act was passed under a separate incorporating statute. Id. In Kelsey, the D.C. Court of Appeals held that the Act "applies only to 'corporations organized' under the act or 'which elect to accept [its] provisions,' and the plaintiffs had pled no facts demonstrating that the Church fit either category." Id. at 1216.

Here, the same principle applies. The District neither alleges EES or EEMC is incorporated under the Act, nor can such statement be fairly made. As conceded in the District's Motion itself, EES and EEMC are for-profit corporations. Plaintiff's Motion for Temporary Relief at 2. As such, the Act does not apply to EES and EEMC, and the District cannot obtain any relief against them under such statute.

Moreover, the Act specifically excludes foreign corporations from its authority. Since EES and EEMC are Delaware corporations, the Attorney General cannot seek a preliminary injunction against them under the purported authority of the Act.

C. Even under equitable injunction principles, the District's Motion for Temporary Relief fails.

This jurisdiction has consistently held that "[a] preliminary injunction is an extraordinary remedy, and the trial court's power to issue it should be exercised only after careful deliberation has persuaded it of the necessity for the relief." Wieck v. Sterenbuch, 350 A.2d 384, 387 (D.C. 1976) (emphasis added); see also District of Columbia v. Group Ins. Admin., 633 A.2d 2 (D.C. 1993). To meet its burden, this Court must consider whether the Plaintiff "clearly demonstrated (1) that there is a substantial likelihood he [or she] will prevail on the merits; (2) that he [or she] is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to him [or her] from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order." Wieck, 350 A.2d at 387.

Among these factors, the single most important inquiry is whether there is an irreparable injury to the movant. Id. at 388; see also Sampson v. Murray, 415 U.S. 61, 88, 94 ("[T]he basis of injunctive relief . . . has always been irreparable harm and inadequacy of legal remedy."). "An injunction should not be issued unless the threat of injury is imminent and well-founded, and unless the injury itself would be incapable of being redressed after a final hearing on the merits." Wieck, 350 A.2d at 388 (emphasis added) (citing Canal Authority v. Callaway, 489 F.2d 572, 573 (5th Cir. 1974); Holiday Inns of America v. B & B Corp., 409 F.2d 614, 618 (3rd Cir. 1969)).

For the reasons addressed below, the District's Motion for Temporary Relief fails to meet its burden on each prong of this strictly applied standard.

(1) The District has not demonstrated that there is any likelihood that it will prevail on the merits.

The District is not likely to prevail on the merits because its factual premises are simply wrong. See section IV, supra. As such, the merits of this action can summarily de decided in Defendants' favor.

(2) The District is not in danger of suffering harm during the pendency of this action, let alone irreparable harm.

- The motion has absolutely no allegations of irreparable injury. Instead, the District characterizes past payments and one future payment to EEMC as irreparable harm. These payments cannot be deemed irreparable injury under any standard.
- Further, an eventual change in management horses midstream might be what causes irreparable injury to the school and its students.
- Alternatively, money could be placed in the court registry as a compromise, allowing this Court to fully consider the merits of this litigation without any risk that funds will be squandered or the school will suffer during a last-minute, mid-school year management transition.

As previously stated, the single most important factor is whether there will be irreparable harm to the movant if a preliminary injunction is not granted. Wieck, 350 A.2d at 387. It is "well established" that this prong requires more than simple pecuniary harm. Zirkle v. District of Columbia, 830 A.2d 1250, 1258 (D.C. 2003) ("The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough.").

Despite, not meeting the required standard, the District contends there is a presumption of irreparable injury when "the Attorney General is seeking an injunction pursuant to express statutory authority to enforce the District's Nonprofit Corporation Act." Plaintiff's Motion for Temporary Relief at 12-13. There is no legal basis for this contention whatsoever. The District premises its argument on two cases where the Securities Exchange Commission ("SEC") was enable to invoke such presumption. This presumption has not been applied in other contexts, however. Even so, both of the securities cases cited by the District make clear this presumption's application, even within the federal securities law, is limited.[25] Thus, the District's attempt to use a presumption of irreparable harm, only applied in limited, specific, and distinct cases must fail.

The District contends that irreparable harm to Options students will be brought to them if its Motion is not granted. Motion for Temporary Relief at 15-16. But the only harm alleged by the District in its Motion relates to the financial transactions between Options and EEMC and/or EES. The District has made no allegation, because none can be made, that the needs of the students attending Options are being underserved by EEMC, EES, or Options School. Every student is receiving the highest quality services to suit their at-risk needs, even if, as the District contends, there is some notion that the charter school is not "devoted" to its nonprofit purpose.

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[25] See SEC v. Management Dynamics, Inc., 515 F.2d 801, 808, 809 n.5 (2d Cir. 1975) ("But the statutory imprimatur given SEC enforcement proceedings is sufficient to obviate the need for a finding of irreparable injury at least where the statutory prerequisite -- the likelihood of future violation of the securities laws -- has been clearly demonstrated . . . . We need not delineate the precise standards for those cases in which the fact of violation and the likelihood of future infractions are not as clear as in the case at bar. Suffice to say that in such cases the district court will attach greater weight to traditional equitable principles in arriving at its conclusion."); SEC v. Levine, 517 F.Supp.2d 121, 147 (D.D.C. 2007) ("There is no requirement that the [Securities Exchange] Commission demonstrate irreparable injury or lack of any adequate remedy at law. The court, however, will engage in the traditional balancing of the equities before issuing an injunction.") (internal citations omitted).

How exactly this vague harm affects the students' needs insofar as to warrant a temporary injunction is unclear. The only risk of harm to the quality of the students' education comes from the Charter Board's suggestion that the management of the school should change, and that the school could potentially lose its charter or close sometime in the future.

(3) There is minimal threat of harm in the future to Plaintiff if this TRO is not granted, but the harm to Defendants EEMC and EES is substantial.

In balancing a claim of equitable relief, this Court "must determine that more harm will result to the movant from the denial of the injunction than will result to the nonmoving parties from its grant." District of Columbia v. Group Ins. Admin., 633 A.2d 2, 23 (D.C. 1993) (emphasis in original). Thus, this Court must weigh the possible effects of an injunction on EES and EEMC against the purported harm alleged in the District's motion.

If this injunction is granted, it is EES and EEMC who would suffer irreparable harm, not the District. Freezing the companies' assets would render them unable to operate their businesses at all, including providing special education services to their other clients outside of Options. On at least one occasion, the D.C. Court of Appeals has ratified a Superior Court ruling that a "substantial disruption in the education of children" constitutes irreparable harm. Feaster v. Vance, 832 A.2d 1277 (D.C. 2003) (enjoining a teachers' strike on the basis that there would be irreparable harm).

Indeed, such an extreme measure would swiftly cause these companies to go out of business permanently. The D.C. Court of Appeals has, in fact, indicated that a "loss that threatens the very existence of the movant's business" is irreparable as well. District of Columbia v. Group Ins. Admin., 633 A.2d at 23.

On the other hand, any effect of denying the District's motion is minimal. The District alleges that its only harm is its "concern that the diversion of funds away from Options PCS may

leave the school unable to provide an appropriate level of services for its students." Plaintiff's Motion for Temporary Relief at 17-18. However, not once has the District alleged a single fact that students are not receiving the services they need. Whether there have been improprieties by EES or EEMC in the bidding process, overcharging for its services, overclassification of students' level of disability, or some other conflict of interest has no effect on the quality of education the at-risk youth are receiving at Options. If this is about money, money can be set aside until the Court can fully consider the merits of this case. There is no reason to disrupt the quality of the students' education in the interim.

(4) The public interest will be disserved by the issuance of a TRO in this circumstance.

- The quality of the services that EEMC and EES have provided to Options School has not been questioned in any regard.
- Options students' best interests will not be served by removing EEMC and EES from Options. As previously discussed, the school's attendance rates, performance improvements, graduation percentages, let alone the school's budgetary surplus, clearly demonstrate that EES and EEMC are serving the best interests of these at-risk students.
- If EES and EEMC's assets are frozen, 21 other District schools will be affected as well, as EES and EEMC will be unable to perform the special education services their clients so desperately need.

VI. CONCLUSION

For the foregoing reasons, the District's Motion for Temporary Relief should be denied.

Dated: October 3, 2013

Respectfully submitted,

/s/ Pamela J. Marple

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2013, a true and accurate copy of the foregoing was served by email and electronic filing as follows:

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